

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 6099

BILL NUMBER: HB 1326

DATE PREPARED: Dec 14, 2000

BILL AMENDED:

SUBJECT: Operating a Motor Vehicle or Watercraft While Intoxicated.

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FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

(A) It reduces from 0.10% to 0.08% the percentage of alcohol concentration equivalent in a person's blood or breath that is necessary to constitute prima facie evidence of intoxication in a prosecution for operating a motor vehicle or watercraft while intoxicated.

(B) It requires a court to order suspension of the certificate of registration and license plate of a vehicle owned by or registered to a person if the person: (1) has at least two convictions for operating a vehicle while intoxicated; and (2) the court recommends suspension of the person's driver's license. It requires a court to order suspension of the certificate of registration and license plate of a vehicle owned by or registered to a person who is convicted of operating a vehicle while intoxicated if the person does not hold any type of valid driver's license. It also sets a \$10 fee for the reinstatement of vehicle registration.

(C) It specifies that a chemical test administered under the implied consent law must be administered after the law enforcement officer has had the test subject under personal observation at the location of the test for at least 20 minutes.

(D) It makes it a Class B infraction for persons in passenger compartments of certain motor vehicles to knowingly possess open alcoholic beverage containers while the motor vehicles are in operation.

(E) It makes conforming amendments.

Effective Date: July 1, 2001.

Explanation of State Expenditures: Provision A: Research suggests that lowering the percentage of alcohol concentration may increase the number of arrests made involving alcohol-related crimes, some of which are Class B, C and D felonies. The following are possible prison terms of these felonies:

<u>Felony</u>	<u>Prison Term</u>	<u>Avg Time Served</u>
Class B	6 to 20 years	3.5 years
Class C	2 to 8 years	1.9 years
Class D	6 mos. to 3 years	301 days

The following represents current Department of Correction (DOC) incarceration statistics for alcohol-related crimes. (Note: There have been no persons recently incarcerated for Class B felony- Driving While Intoxicated Resulting In Death.)

<u>Number of Individuals Incarcerated for Felony Crimes</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>
Class D OWI (Repeat Offense)	540	599	510	558	997
Class D OWI Resulting In Serious Bodily Injury	17	18	14	18	16
Class C OWI Resulting In Death	28	20	17	26	23

The average expenditure to house an adult offender was \$20,700 in FY 1999. Individual facility expenditures range from \$14,936 to \$37,807. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

Provision B: The provision regarding court-ordered suspension of registration and plates, will require start-up costs for the Bureau of Motor Vehicles estimated at \$41,100. These costs consist of computer changes for the new license plate estimated at \$28,000; computer changes for restricted issuance of the plate estimated at \$500; and the plate design estimated at \$2,600. The fund affected is the Motor Vehicle Highway Account which supports the Bureau of Motor Vehicles. These costs can be absorbed within their current budget. The proposal allows the BMV to adopt rules to implement the proposal. Annual on-going costs are estimated at \$3,600 and consists of new plates, ordering and distribution.

Provision C: For the State Police and the Conservation Officers of the Department of Natural Resources, the provision regarding administration of a chemical test after at least 20 minutes may require additional time at vehicle stops. The specific impact is indeterminable and will depend upon the number of such vehicle stops. The funds affected for the State Police are the State General Fund, the Motor Vehicle Highway Account, and the Motor Carrier Regulation Fund, all of which support the State Police. For the Conservation Officers, the funds affected are the State General Fund and the Fish and Wildlife Fund.

Explanation of State Revenues: Provision A: Decreasing the intoxication level necessary for prosecution may affect crimes chargeable with Class C infractions and Class C misdemeanors, as well as B, C, and D felony crimes. If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class C infraction is \$500 which is deposited in the state General Fund. The maximum fine for a Class C misdemeanor is \$500. The maximum fine for a Class B, C, or D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, county, or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

If the criminal action or infraction involves a traffic violation, including this proposed offense, a highway work zone fee of either 50 cents or \$25.50 is assessed. The court may also impose an alcohol and drug counter measures fee of \$200. Revenue collected is deposited in the State User Fee Fund.

Provision B (regarding court-ordered suspension of registration and plates): The \$10 fee charged for drivers with OWI offenses who have previous offenses could generate an additional \$39,500. BMV reports that the

number of licenses suspended where the driver had a previous OWI conviction with either a valid license or no license was 3,711 in CY 1999 and an estimated 3,950 in CY 2000.

Provision D (regarding open containers) provides for a Class B infraction. If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class B infraction is \$1,000 which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed. 70% of the court fee would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Effect on Federal Funding: Provision A (decreasing the intoxication level necessary for prosecution) could impact federal transportation funding that Indiana is projected to receive as well as eligibility for impaired driving enforcement funds. First, if the .08 standard is not instituted by 2003, Indiana will lose 2% of its Department of Transportation (DOT) dollars as a penalty in 2004, 4% in 2005, 6% in 2006, and 8% in 2007.

For Indiana, the amount to be lost in 2004 is not known since current federal funding laws do not extend beyond 2003. During the current funding year, Indiana received \$700 M in federal funding. Consequently, at today's funding level, the 2% penalty in 2004 would be \$14 M.

These federal funds could be reimbursed to Indiana if legislation is passed by 2007, but the funds are not recoverable if .08 legislation is not passed before 2007.

Indiana would also qualify for additional funds for highway safety enforcement. The following are estimates of the past and future federal safety grants which Indiana has either forfeited or will forfeit if the .08 legislation is not instituted.

<u>FY 1998</u>	<u>FY 1999</u>	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>
\$3.1 M	\$3.0 M	\$3.5 M	\$4.3 M	\$4.9 M	\$5.4 M

Provision D (regarding open containers) could impact federal transportation funding that Indiana is projected to receive. On October 1, 2000, and October 1, 2001, if a state has not enacted and is not enforcing an open container law, an amount equal to 1.5% of funds apportioned to the state for highway use will be transferred to the state's Section 402 apportionment. That amount must be used for alcohol-impaired driving countermeasures or enforcement of driving while intoxicated (DWI) or driving under the influence (DUI) laws.

On October 1, 2002, and each October 1 thereafter, if a state has not enacted and is not enforcing an open container law, the transferred amount increases to 3% of the states's appropriation for the specified Federal-aid programs.

The U.S. Department of Transportation, Federal Highway Administration, estimated the amount of the penalty to be \$6.6 M for Federal Fiscal Year (FFY) 2001. The National Highway Transportation Safety Administration reports that the transfer has been made and the actual amount is \$6.9 M.

The estimate for FFY 2002 (which begins October 1, 2001) is \$7.6 M and the estimate for FFY 2003 is \$15.2 M.

Explanation of Local Expenditures: Provision A (decreasing the intoxication level necessary for prosecution): A Class C misdemeanor is punishable by up to 60 days in jail. If more defendants are detained in county jails due to misdemeanors or prior to their felony court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Provision C: For local law enforcement officers, the provision regarding administration of a chemical test after at least 20 minutes may require additional time at vehicle stops. The specific impact is indeterminable and will depend upon the number of such stops.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction; Department of Transportation; Bureau of Motor Vehicles; State Police; and Conservation Officers.

Local Agencies Affected: Trial courts; local law enforcement agencies.

Information Sources: Indiana Sheriffs Association; Department of Correction; Criminal Justice Institute, Bureau of Motor Vehicles.